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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 22-01142-mg

5 - - - - - x

6 In the Matter of:

7  
8 CELSIUS NETWORK, LLC,

9

10 Debtor.

11 - - - - - x

12 AD HOC GROUP OF CUSTODIAL ACCOUNT HOLDERS,

13 Plaintiff,

14 v.

15 CELSIUS NETWORK, LLC, et al.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 One Bowling Green

20 New York, NY 10004

21

22 November 22, 2022

23 10:03 a.m.

24

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Page 2

1 B E F O R E :  
2 HON MARTIN GLENN  
3 U.S. BANKRUPTCY JUDGE  
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5 ECRO: JONATHAN  
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1 HEARING re 22-01142-mg Case Management Conference Using Zoom  
2 for Government. (Doc ## 1 to 4, 6, 7, 8, 12)

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4 HEARING re Case Management Conference Using Zoom for  
5 Government. (Doc## 737, 745, 857, 914, 937, 951, 954, 984,  
6 1044, 1192, 1234, 1245, 1288, 1289 to 1293, 1370)

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P R O C E E D I N G S

1  
2 CLERK: All right. We are going to be starting  
3 the hearing. Please pay attention to the announcements.  
4 All persons are strictly prohibited from making any  
5 recording of Court proceedings, whether by video, audio,  
6 screenshot or otherwise. Violation of this prohibition may  
7 result in the imposition of monetary and non-monetary  
8 sanctions. The Clerk of the Court maintains an audio  
9 recording of all proceedings which constitutes the official  
10 record. Parties must state their name each time they speak  
11 on the Court record. A party must join with a full first  
12 and last name to be admitted from the waiting room. Parties  
13 that join with initials, a partial name, a designation such  
14 as iPhone, etc., will not be admitted. Judge, would you  
15 like to begin?

16 THE COURT: Yes, I would. Thank you and good  
17 morning, everybody. This is Judge Glenn. We're here in the  
18 case management conference. The date was set in the Joint  
19 Stipulation and Agreed Scheduling Order with regard to the  
20 custody and withhold issues. I've got that Stipulation open  
21 in front of me. Let me ask for the -- counsel for the  
22 custody holders to begin first and then I'll turn to Ms.  
23 Kovsky on behalf of Withhold Account Holders, the Ad Hoc  
24 Committee.

25 MR. KOTLIAR: Hi. Good morning, Your Honor. This

1 is Bryan Kotliar of Togut Segal & Segal, counsel for the Ad  
2 Hoc Group of Custodial Account Holders. Can you hear me,  
3 okay?

4 THE COURT: Yes, I can.

5 MR. KOTLIAR: Thank you, Your Honor. So,  
6 currently we filed our Phase 1 Opening Brief in accordance  
7 with the Scheduling Order. All the other parties did so, as  
8 well. The Debtors filed one Declaration regarding certain  
9 questions that the Creditors Committee had. It also  
10 answered certain questions that we had, as well. We, the  
11 Creditors Committee, we understand, and the Withhold Group  
12 have some follow-up questions for the Debtor's Declarant  
13 regarding the contents of that Declaration as it relates to  
14 our issues. We think that, subject to seeing what's in that  
15 Supplemental Declaration, and subject to understanding one  
16 item about the pending withdrawals, we don't have any  
17 factual disputes for which we are expecting depositions or  
18 cross-examinations or really any contested evidentiary  
19 matters that need to be decided by the Court at the hearing  
20 on December 7th.

21 So, with that being said, our expectation, again,  
22 subject to seeing the Supplemental Declaration, subject to  
23 seeing the parties' responsive briefs, is that, at the  
24 hearing on December 7th, we'll be presenting solely legal  
25 issues for the Court to determine. We did meet and confer

1 with the other parties last night and I believe that that's  
2 consistent with our collective understanding, but I will let  
3 them speak for themselves.

4 THE COURT: Let me ask you a question. I guess  
5 this is a question for everyone, really, whether the  
6 Blonstein Declaration is consistent with the Examiner's  
7 Report.

8 MR. KOTLIAR: So, Your Honor, in our view they are  
9 consistent. They are certainly not inconsistent. And I  
10 would say that the way that we view the Blonstein  
11 Declaration, and the Examiner Report together is that the  
12 Blonstein Declaration says the "what" and the "where," and  
13 the Examiner Report, consistent with the Appointment Order,  
14 says the "why," "when" and the "how." And so, it all fits  
15 together with one consistent story. I think the Examiner  
16 Report just kind of fills in the gaps about what happened  
17 and why.

18 THE COURT: Okay, and I guess this is also a  
19 question for all the counsel in this proceeding. Is it  
20 contemplated that the parties either will stipulate to the  
21 Court being able to use the Examiner's Report or that you'll  
22 stipulate to admissibility solely for the purpose of this  
23 hearing of the Examiner's Report? Is that something that's  
24 been discussed?

25 MR. KOTLIAR: We have not discussed that yet, Your

1 Honor.

2 THE COURT: Okay. Ms. Kovsky?

3 MS. KOVSKY: Good morning, Your Honor. Deb  
4 Kovsky, Troutman Pepper, for the Ad Hoc Group of Withhold  
5 Account Holders. I concur with what Mr. Kotliar just said.  
6 We did meet and confer yesterday. We don't anticipate  
7 calling any live witnesses at the hearing, subject of course  
8 to seeing the Supplemental Declaration that we anticipate  
9 will be forthcoming from Mr. Blonstein. And with respect to  
10 the Examiner's Report, although we did not discuss it, my  
11 client certainly would have no issues stipulating to its  
12 admissibility for purposes of this hearing.

13 THE COURT: Mr. Kotliar, do you have a view of  
14 that? I'm not -- I mean, I've read it and obviously, I  
15 asked the question, but I went back and read the Blonstein  
16 Declaration, as well. I asked my question about it, are  
17 they consistent with each other? Do you have a view, at  
18 this point, on whether you're prepared to stipulate to the  
19 admissibility only for the purposes of this hearing of the  
20 Examiner's Report?

21 MR. KOTLIAR: We have not formed a view on that  
22 yet. I think we probably are likely to do that, but I --

23 MS. KOVSKY: I'm not pressing anybody today for  
24 the answer. What I would request is -- I mean, it is an  
25 important -- from the Court's standpoint, it's an important

1 piece of information and I do want you all to confer and see  
2 whether there is agreement or not. I'm not trying to force  
3 anybody into agreement, but I want to see whether there is  
4 agreement, a stipulation to the admissibility for this  
5 purpose only. I'm not -- you know, if there -- if there are  
6 Phase 2 issues or anything like that, that have to get  
7 resolved, I'm not -- you'll have to -- and if the Report is  
8 relevant to that, I'm not -- so, you're agreeing to the  
9 admissibility for purposes of Phase 1 will not prejudice  
10 your right to object to it as to Phase 2 or any other  
11 proceeding. Just let me leave it at that, okay?

12 MR. KOTLIAR: Understood, Your Honor. We'll come  
13 back.

14 THE COURT: Okay. All right. Mr. Hershey?

15 MR. HERSHEY: Good morning, Your Honor. Sam  
16 Hershey from White & Case, for the Official Committee of  
17 Unsecured Creditors. Can Your Honor hear me, okay?

18 THE COURT: Yes, I can. Thank you.

19 MR. HERSHEY: Great. Thank you, Your Honor. I  
20 have nothing really to add in addition to what Mr. Kotliar  
21 has already said. We reserve the same rights to review the  
22 Supplemental Blonstein Declaration, the filings. The  
23 Committee has been viewing the Examiner's Report. We  
24 haven't yet formed a position on it or whether it requires  
25 additional discovery on custody. And we're happy to take

1 Your Honor's suggestion to discuss with the other parties  
2 whether that's the case and whether we'll agree to admit it  
3 for a limited purpose of the hearing. And we'll certainly  
4 do that very quickly after this hearing.

5 THE COURT: Okay. I guess I should have asked  
6 this, what's the Supplemental Blonstein Declaration supposed  
7 to cover? You're muted, Mr. Hershey.

8 MR. HERSHEY: Sorry, I muted myself.

9 THE COURT: That's okay.

10 MR. HERSHEY: I apologize. The parties posed a  
11 number of supplemental questions to the Debtors just based  
12 on what we viewed as open items that hadn't been fully  
13 covered in the initial Blonstein Declaration, only a handful  
14 of questions. And the Debtors can address this, but we did  
15 not get the sense that it would unduly burdensome or  
16 problematic for the Debtors to provide those answers.

17 THE COURT: And was that, just so we're clear, I  
18 guess I should have asked Ms. Kovsky this, as well. Let me  
19 ask Ms. Kovsky first. You indicated you don't intend -- you  
20 don't anticipate calling any witnesses. Do you anticipate  
21 wanting to cross-examine Mr. Blonstein?

22 MS. KOVSKY: Depending upon the contents, and  
23 subject to the review of the Supplemental Declaration, our  
24 anticipation is that we would just rely on the written  
25 Declarations and not cross-examine.

1 THE COURT: Okay. Fine. Same question to you,  
2 Mr. Hershey.

3 MR. HERSHEY: The Committee takes the same  
4 position. We think that we'll be able to avoid any  
5 evidentiary presentation at the hearing and just do  
6 argument.

7 THE COURT: Okay. All right. Mr. Koenig?

8 MR. KOENIG: Thank you, Your Honor. For the  
9 record, Chris Koenig, Kirkland & Ellis for the Celsius  
10 Debtors. I'm going to agree with what other counsel has  
11 indicated. We believe that the evidentiary presentation  
12 will be very limited, and we can proceed to argument. One  
13 item I did want to raise that I know is important to Ms.  
14 Kovsky is, her client submitted some Declarations that she  
15 attached to her opening brief. And the parties met and  
16 conferred and have no objection to those being part of the  
17 proceeding, as well. And just to confirm, the Debtors don't  
18 anticipate cross-examining any of those individuals and I  
19 don't believe that the Committee or the Ad Hoc Group of  
20 Custody Holders do, as well. I just wanted to make sure  
21 that that was on the record for Ms. Kovsky.

22 THE COURT: Okay. Ms. Kovsky, anything you want  
23 to add on that point?

24 MS. KOVSKY: No, and I apologize for not  
25 mentioning that. Yes, those Declarations were also part of

1 our discussion yesterday and I appreciate everyone's  
2 accommodation in not deposing and cross-examining. They're  
3 fairly straightforward.

4 THE COURT: Okay. Mr. Hershey?

5 MR. HERSHEY: Completely agree, Your Honor.  
6 Nothing to add.

7 THE COURT: Okay. Mr. Koenig, maybe you can tell  
8 me, what is the likely subject of any supplemental Blonstein  
9 Declaration?

10 MR. KOENIG: Yes, Your Honor. The parties asked  
11 us some questions that were raised that they didn't believe  
12 were fully addressed by the initial Blonstein Declaration.  
13 I don't have the list in front of me, but as Mr. Hershey  
14 indicated, we'll be able to get that done over the next week  
15 or so. Obviously, we have the intervening holidays, but  
16 it's not substantially different from what the initial  
17 questions were. It's more follow on questions that the  
18 parties had after reviewing the initial Blonstein  
19 Declaration that they just wanted to understand a little bit  
20 tighter what the issues that were raised in the Declaration  
21 were.

22 THE COURT: All right. And what is the Debtor's -  
23 - does the Debtor have a position at this point on whether  
24 it's prepared to stipulate solely for the purpose of this  
25 hearing to the admission of the Examiner's Report?

1 MR. KOENIG: Your Honor, we hadn't considered it  
2 prior to this hearing. I don't expect we're going to have  
3 an issue but let us take that off-line with the other  
4 parties as you suggest.

5 THE COURT: That's fine, and I would appreciate it  
6 if you would all discuss it. And again, you can put in a  
7 reservation of rights that if you all stipulate to the  
8 admissibility for purposes of this hearing, it won't be --  
9 it's without prejudice to anybody's ability to object to it,  
10 any subsequent proceeding. Let me -- Ms. Kovsky, I think  
11 your opening brief briefly addressed the point about -- one  
12 takeaway that I got from the Examiner's Report is the  
13 shortfall in what assets were transferred to -- and this may  
14 be more of a question for Mr. Kotliar. But when assets were  
15 transferred to the custody account, so as a shortfall, it  
16 was made up -- they did reconciliations, I'll say  
17 irregularly, but not -- it was not automatic, let's put it  
18 that way. And my term, not the report, they "trued up" at  
19 various times when there was a shortfall. It raises the  
20 question, at least -- I'm not saying that it's the -- that  
21 it would apply in this case under these circumstances, but  
22 I'm certainly familiar with prior cases in this Circuit that  
23 have applied the lowest intermediate value rule in  
24 allocating any shortfall. I think you briefly addressed it  
25 in your brief. I don't remember seeing it in anybody else's

1       brief. Is that likely to be an issue that the Court is  
2       going to have to address in Phase 1? I called on you first,  
3       Ms. Kovsky, on this point, and then I'll give everybody else  
4       a chance if they want to address it.

5               MS. KOVSKY: Your Honor, yes, Deb Kovsky, Troutman  
6       & Pepper for the Withhold Group. I believe that is  
7       something that Your Honor will need to look at with respect  
8       to Withhold and I can't really speak to the custody issues,  
9       but because there wasn't a separate wallet --

10              THE COURT: It was a separate wallet, yeah.

11              MS. KOVSKY: -- for Withhold, and it seems that  
12       the custody wallet was perhaps not run as tightly as it  
13       might have been. So, one of the questions that we have  
14       addressed to the Debtor for the Blonstein Supplemental  
15       Declaration is, we've asked that the Debtors provide the  
16       lowest intermediate balance on a coin-by-coin basis for,  
17       what's in fire blocks (indiscernible), what's there, what's  
18       the lowest it dipped? I mean, the Withhold Group is so  
19       small, it seems all but impossible that the total has ever  
20       got below the amounts that are owed to the Withhold Account  
21       Holders. But that is one of the factual questions that  
22       we're hoping to get an answer to in the next few days or  
23       week.

24              THE COURT: Okay. Mr. Kotliar, do you want to  
25       address that issue, at all?

1 MR. KOTLIAR: Sure, Your Honor. Again, Bryan  
2 Kotliar, counsel for the Ad Hoc Group of Custodial Account  
3 Holders. This does go to the one or two questions we have  
4 for Mr. Blonstein for the Supplemental Declaration. I think  
5 the Examiner Report actually gave us comfort on this because  
6 there is a line towards the end that says, as of the  
7 Petition date, the custody -- the assets in the custody  
8 wallets largely met or were consistent with the custody  
9 liabilities relating to the custody service. The questions  
10 that we have are, what are the -- and it's very simple, what  
11 were the coin assets and liabilities in the custody wallets  
12 as of the Petition date and currently? I think the only  
13 shortfall that has arisen, based on what we've read from the  
14 Debtors, is that there is this pending withdrawal or  
15 cancellation that caused some assets to -- should have left  
16 custody and actually gone back to the holders. They never  
17 arrived outside of the platform and since they've now gone  
18 back into custody, there is this apparent mismatch, and so,  
19 we're going to brief that in our responsive pleading.

20 THE COURT: All right. Mr. Hershey?

21 MR. HERSHEY: So, I think that, obviously, the  
22 Committee, as Your Honor is aware, disputes that the  
23 Withhold Group has an ownership interest in the assets. But  
24 to the extent Your Honor disagrees that perspective, I think  
25 we would have to determine the issue. And so, that would be

1 our position, and the same is true for custody. If there is  
2 going to be a distribution of custody assets, we would need  
3 to determine a shortfall.

4 THE COURT: So, are parties going to address this  
5 issue? And is that under the Schedule, December 2nd is the  
6 deadline for parties to file responsive briefs on the Phase  
7 1 issues. Is that something that the Committee intends to  
8 address?

9 MR. HERSHEY: Yes, the Committee intends to  
10 address that issue, Your Honor.

11 THE COURT: Okay. Mr. Kotliar, are you going to  
12 address this issue in your additional brief?

13 MR. KOTLIAR: Yes, Your Honor.

14 THE COURT: Okay. Ms. Kovsky, you've briefly  
15 addressed it already. Are you going to say anything -- is  
16 that something you're going to address in your supplemental  
17 brief?

18 MS. KOVSKY: I anticipate that I will, Your Honor.  
19 (indiscernible) if we get updated information from Mr.  
20 Blonstein.

21 THE COURT: Okay. Mr. Koenig?

22 MR. KOENIG: Your Honor, we will do so, as well.  
23 Of course.

24 THE COURT: Okay. All right. If, as it seems  
25 now, that no-one is anticipating either calling live

1 witnesses or cross-examining the Declarants, I'm very  
2 comfortable, we have the two days set aside for the hearing.  
3 I'm not going to impose time limits on your individual  
4 arguments. It does seem to me that, unless you disagree  
5 now, which I'd like to hear, that the Custody in Withhold  
6 counsel should go first and then the Committee and then the  
7 Debtor. I don't know whether you had talked about this, and  
8 I'll obviously give people a chance to reply. I mean, we  
9 should be very comfortable with, if in fact, there's no  
10 cross-examination of witnesses. I've already read the  
11 papers that have been filed so far. There's still have a  
12 lot more preparation to do and obviously, there's another  
13 round of briefs to go. Let me ask this, does anybody  
14 disagree with what I've suggested? And I would let -- Mr.  
15 Kotliar and Ms. Kovsky, I'd have the two of you work out  
16 between you who would go first, who would go second. I  
17 don't -- I don't think it's a big deal, frankly, myself.  
18 But I want to go into this hearing so that you all know the  
19 order in which people are going to go, etc.

20 MR. KOTLIAR: Your Honor, we -- when we met and  
21 conferred last night, this is one of the things that we  
22 discussed, but we did not come to an agreement on. We  
23 didn't have a disagreement, but it's just something that we  
24 said we would discuss.

25 THE COURT: Okay. That's fine. That's fine.

1 MR. KOTLIAR: I just want to note one thing, which  
2 is, whoever goes first, second or third, I think one of the  
3 issues that your Court is going to have to consider is, who  
4 has the burden on what issues. And I don't want the  
5 process, whoever proceeds in what fashion, to impact who has  
6 the burden.

7 THE COURT: That's fair. I guess the reason I  
8 said that Custody in Withhold ought to go first is, you want  
9 the stuff back. And I'm certainly open to having you -- all  
10 of you argue about where you think the burden goes, but at  
11 least with the initial going forward, you want the stuff  
12 back and the Committee and the Debtor, not so much. Let's  
13 put it that way. I'll leave it at that, so --

14 MR. KOTLIAR: Yes, Your Honor.

15 THE COURT: Okay. All right. So, Mr. Kotliar, I  
16 don't know whether it is going to be you who is going to be  
17 speaking or -- for Custody?

18 MR. KOTLIAR: It'll be my colleague, Mr. Ortiz.  
19 He wasn't able to join this morning because of a medical  
20 emergency. I think we're probably happy to go first, but I  
21 think where we left off with the parties is, we would  
22 discuss it.

23 THE COURT: Well, I'll let you discuss it and --  
24 so I see we have the Examiner present at the hearing, as  
25 well. Ms. (indiscernible), is there anything that you

1 wanted to say at this point?

2 MS. (indiscernible): Good morning, Your Honor. I  
3 have nothing to add at this point, unless Your Honor has any  
4 specific questions for me.

5 THE COURT: No, I was busy reading, and the Court  
6 very much appreciates that you delivered the Report on time  
7 and very comprehensive, so -- all right. So, the open  
8 question that I would like an answer to when you've -- if  
9 you can reach an agreement about it is whether the parties  
10 to this, about stipulating to the admissibility for purposes  
11 of this hearing of the Examiner's Report. When you have a -  
12 - if you come to an agreement on it, you can -- somebody can  
13 file a status letter just indicating that that's resolved.  
14 I don't need to know in advance how you work out the order  
15 in which you're all going to argue. And as I say, I'm not  
16 going to set -- we've got plenty -- I'm not -- sometimes  
17 less is better, but I'm not going to set any time limits on  
18 each of your presentations. Okay?

19 MR. KOENIG: Thank you, Your Honor. And just, if I  
20 may for a moment --

21 THE COURT: Go ahead, Mr. Koenig.

22 MR. KOENIG: When the parties discussed --

23 THE COURT: You have to identify yourself, Mr.  
24 Koenig, each time you speak.

25 MR. KOENIG: Oh, I'm sorry. Again, for the

1 record, Chris Koenig, Kirkland & Ellis. The parties  
2 discussed dispensing with opening arguments and closing  
3 arguments and just getting right into the merits of the  
4 arguments, and I assume that that was fine with Your Honor,  
5 but we just wanted to confirm.

6 THE COURT: Absolutely. Absolutely. You know,  
7 I've read everything more than once already and everything  
8 will be read again before the hearing. There is this one  
9 additional round of briefs and there will be another  
10 Blonstein Declaration, it appears, and obviously I will have  
11 read that, as well.

12 MR. KOENIG: Right, and Your Honor, how we intend  
13 to proceed is, there are three issues. The property of the  
14 estate issue, with respect to Custody, the property of the  
15 estate issue with respect to Withhold, and then the further  
16 issue of, even if Withhold or Custody is not property of the  
17 estate, may the Debtor nonetheless maintain possession and  
18 control over those assets? We would anticipate arguing  
19 those three issues in series.

20 THE COURT: Okay.

21 MR. KOENIG: And then, of course, Your Honor,  
22 there's also the Debtor's Motion to Allow Withdrawals from  
23 Custody and Withhold Below Certain Dollar Amounts that we  
24 would propose hearing after this issue is argued. It's the  
25 Debtor's Motion, but we would propose having that heard

1 later in the day, probably on the 7th, after this argument  
2 is wrapped up. There's a number of objecting parties to  
3 that matter, but it was on the calendar for all of this to  
4 be tried on the same day, but we would have that heard after  
5 argument on these issues with these parties.

6 THE COURT: Okay. I need to go back and read  
7 that. My focus has been on -- it's important. I don't mean  
8 to underestimate the importance of it. How many account  
9 holders is it that the Debtor is proposing to return the  
10 assets? I take it that all of the people to whom the Debtor  
11 proposes to return assets are below that threshold for  
12 preference avoidance actions?

13 MR. KOENIG: That's largely true, Your Honor.  
14 There are some folks that only had custody assets. It was  
15 never in earnest, so there's not a preference with respect  
16 to those folks. The number is something around 40,000  
17 individuals. There are many individuals with small balances  
18 on the account, so --

19 THE COURT: Okay.

20 MR. KOENIG: -- it affects a great number of  
21 people, and we would obviously like, to the extent it is  
22 determined by the Court that Custody or Withhold are not  
23 property of the estate and the Debtor has no viable  
24 preference claim because it's below the dollar threshold, we  
25 would like to get dollars out to those customers, obviously,

1 as soon as possible.

2 THE COURT: Okay. Is the briefing closed on that,  
3 Mr. Koenig?

4 MR. KOENIG: The objections have already been  
5 filed. The Debtor's Reply Brief is due the same day as the  
6 secondary briefs on this issue, next Friday, December 2nd.

7 THE COURT: All right. Okay. Does anybody else  
8 have anything they want to add for today? I hope you all  
9 have a very nice Thanksgiving.

10 MR. KOENIG: Happy Thanksgiving, Your Honor.

11 THE COURT: Okay.

12 MR. HERSHEY: Happy Thanksgiving, Your Honor.

13 THE COURT: All right. We're adjourned.

14 MR. KOENIG: Thank you.

15 (Whereupon these proceedings were concluded at  
16 10:25 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: November 25, 2022

[& - anne]

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